

EXHIBIT 20

**SPRINGFIELD PUBLIC SCHOOLS
TECHNOLOGY SERVICES AGREEMENT**

THIS AGREEMENT made by and between the CITY OF SPRINGFIELD, a municipal corporation within the County of Hampden and the Commonwealth of Massachusetts, with its principal offices at 36 Court Street, Springfield, Massachusetts 01103, acting by and through its School Committee and Chief Procurement Officer with the approval of its Mayor, (hereinafter called the "City"), and **Achieve Telecom Network of MA, LLC.**, a Nevada LLC located at: **40 Shawmut Road, Suite 200, Canton, MA 02021**, (hereinafter referred to as the "Vendor").

RECITALS

WHEREAS, the City through its School Committee and Chief Procurement Officer is seeking a vendor to provide technology services as more specifically defined in Exhibit "A", attached hereto and incorporated herein by reference, (hereinafter "Technology Services") to: Springfield Public Schools and

WHEREAS, the Vendor has the necessary qualifications, expertise, experience and ability to provide the Technology Services on behalf of the City; and

NOW THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES:

A. The Vendor shall, in a professional and proper manner, provide Technology Services in accordance with the terms and conditions of this Agreement and pursuant to Commonwealth of Massachusetts State Contract(s) identified as: MA(OSD) ITS07 (hereinafter referred to as "the State Contract").

1. In accordance with the terms and conditions of this Agreement and the State Contract, the Vendor represents that it is qualified to perform the Technology Services and has obtained all requisite licenses and permits to perform the Technology Services.
2. The Vendor shall attend all necessary conferences and meetings with the City during all stages of the Technology Services.
3. The Vendor and City recognize that the technology industry is constantly evolving and that modifications to the Technology Services may be required and therefore, agree that the Vendor shall consult with the City through its designee Robert G. Hamel, Assistant to the Superintendent, and receive his prior written approval before making any allowable modifications to the Technology Services defined in Exhibit "A" and shall conform its Technology Services to such approved modifications.

2. TIME:

The Vendor hereby agrees with the City to furnish & deliver Technology Services for a period of one (1) year commencing on July 01, 2004 and shall be completed by September 30, 2006, (pursuant to Exhibit B) unless amended by the parties hereto.

3. **COMPENSATION, PAYMENT AND BILLING PROCEDURE:**

- A. It is expressly agreed and understood that in no event shall the City have any financial liability under this Agreement and that the funding for this contract shall be in the amount of:

One Million Seven-Hundred Eight Thousand Fifty Dollars and 00/00 (\$ 1,708,050.00)

and shall be provided for as specified in Sections B,C,D,& E detailed below.

- B. If the City is eligible for a Universal Service Fund Discount for the Technology Services from the Schools and Library Division (hereinafter "S.L.D.") of the Universal Service Administrative Company (hereinafter "USAC") which is a non-profit corporation which administers the Universal Service Fund for the Federal Communication Commission ("FCC"), payment for the Technology Services will be made either by the Service Provider Invoice method ("SPI") or a Billed Entity Applicant Reimbursement ("BEAR") method as specified by USAC under the FCC "ERATE" program. Under the "SPI" method of reimbursement, the City will pay only its discounted share to the Vendor; the balance of the invoice is paid or credited to the Vendor by USAC. In some situations the SPI method of payment is impractical. In such cases, the City may choose the BEAR method of payment. Under the BEAR method, the City will pay Vendor's invoice in advance of the City receiving the USAC reimbursement. Under the BEAR method, when and if a USAC funding commitment letter is later obtained, the City will request a reimbursement from USAC. **Upon receipt of the BEAR, the Vendor must promptly remit that sum to the City. If the BEAR method is used, once the Vendor obtains the reimbursement from USAC, the Vendor acts merely as a pass-through and must reimburse the City its money. The parties agree that any BEAR Reimbursement is the absolute property of the City and that the Vendor has no legal or equitable right to the BEAR Reimbursement.**

- Pursuant to Exhibit C: **ERATE Funding Commitment Letter – 06/14/2005**

- C. *Pursuant to Vendor's quote attached hereto as Exhibit "A" and pursuant to applicable Commonwealth of Massachusetts Blanket pricing, USDLA (United States Distance Learning Association) agrees to compensate Vendor for Technology Services less any monies awarded through direct payment by S.L.D. to the Vendor as referenced in this Agreement and consistent with applicable federal statutes, regulations, and USAC's rules and manual.

- D. *Payments will be made pursuant to paragraph 3.C of this Agreement only upon the submission of an invoice to the City that clearly states the services provided, including the date and nature of the services rendered. Invoices must be submitted in triplicate and mailed to:

**United States Distance Learning Association
Attn: USDLA Digital Divide Fund
8 Winter Street, Suite 508
Boston, MA 02108-4705**

- *Pursuant to:
 - Exhibit D: **USDLA Co-Pay Funding Commitment – 03/18/2004**
 - Exhibit E: **USDLA Co-Pay Funding Confirmation – 08/31/2005**

- E. The City shall not be liable for any services, expenses, or costs in connection with the Technology Services in excess of the amount currently appropriated therefore under this Agreement or any amendments hereto.

4. **TERMINATION:**

The City may terminate this Agreement for any reason prior to the date of expiration with 15 days written notice. In the event of termination of this Agreement, the sole remedy available to Vendor is the amount of fees for Technology Services rendered but not yet paid.

5. **REMEDIES OF THE CITY:**

If Vendor shall provide services to the City in a manner which are not to the satisfaction of the City, City may suspend or terminate payment to Vendor in whole or in part, until the Technology Services described in Exhibit A are completed to the satisfaction of the City and in addition may:

- A. require the Vendor to provide Technology Services which are satisfactory to the City at no additional cost to the City, or
- B. obtain services at the cost of the Vendor in substitution for those due from the Vendor, or
- C. terminate this Agreement.

6. **LIABILITY AND INSURANCE:**

- A. The Vendor shall at its own expense shall provide, maintain and require its subcontractors to provide and maintain all insurance for its employees, including disability, worker compensation and unemployment compensation, in accordance with the statutory requirement of any state where the work is performed. The Vendor is an independent contractor and is not an employee or agent of the City.
- B. The Vendor shall indemnify and hold harmless the City against any and all liability, lost damages, costs or expense for personal injury or damage to real or tangible personal property which the City may sustain, incur or be required to pay, arising out of or in connection with the Technology Services performed under this Agreement by reason: of any negligent action/inaction or willful misconduct of the Vendor, its agents or persons employed by the Vendor, or any of its subcontractors.

7. **SUCCESSORS AND ASSIGNS:**

- A. The City and the Vendor each binds itself, and legal representatives to such other party with respect to all covenants of this Agreement.
- B. Neither the City nor the Vendor shall assign any interest in this Agreement or transfer any interest in the same without prior written approval of the other party thereto.

8. **EQUAL EMPLOYMENT OPPORTUNITY:**

During the performance of this Agreement, the Vendor agrees as follows:

- A. The Vendor will not discriminate against any client or applicant for services because of race, color, religion, sex, sexual orientation, disability, family status or national origin. The Vendor will take affirmative action to ensure that clients, applicants and employees are treated without regard to their race, color, religion, sex, sexual orientation, disability, family status or national origin.
- B. In the event of the Vendor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further City contracts.

9. **CONFLICT OF INTEREST:**

- A. The Vendor further covenants that in the performance of this Agreement that it does not have any interest, direct or indirect, which will conflict in any manner or degree with the performance of the services hereunder, as set forth in chapter 268A of the Massachusetts General Laws.
- B. No officer or employee of the City shall participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested. No officer or employee of the City shall have any interest, direct or indirect, in the Agreement or the proceeds thereof.

10. **APPLICABLE LAW AND EXCLUSIVE FORUM:**

- A. This agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.
- B. The parties hereto expressly agree that the sole and exclusive place, status and forum of this agreement shall be the City of Springfield, Hampden County, Massachusetts. All actions and legal proceedings which in any way relate to this agreement shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City of Springfield, Hampden County, Massachusetts. It is the express intention of the parties to this agreement that the exclusive venue of all legal actions and procedures of any nature whatsoever which relate in any way to this agreement shall be either the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts sitting in the Hampden County Hall of Justice, Springfield, Massachusetts or the United States District Court sitting in Springfield, Massachusetts.

11. **COMPLIANCE WITH LAWS:**

The Vendor shall comply with all applicable rules and regulations promulgated by all local, state and national boards, bureaus and agencies.

12. **EFFECTIVE DATE:**

This Agreement becomes effective upon execution by the Mayor of the City of Springfield and, if subject to USAC reimbursement, (a) the approval of the maximum allowable funding by the S.L.D. as referenced in 3 above or (b) an authorizing vote of the Springfield School Committee to proceed at less than maximum allowable funding by the S.L.D.

13. EXTENT OF AGREEMENT:

This Agreement represents the entire and integrated Agreement between the City and the Vendor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Vendor.

IN WITNESS WHEREOF, the **CITY OF SPRINGFIELD**, acting by and through its School Committee and Chief Procurement Officer, with the approval of its Mayor, have executed this Agreement as a seal instrument on the day and year dated below.

VENDOR: Achieve Telecom Network of MA, LLC.

By: _____

Victor G. Bitt

Approved as to Form: _____

James T. Papp
Associate City Solicitor 10/24/05
Assistant

Approved as to appropriation: _____

~~\$1,708,050.00~~ ZERO

FUND: N/A

Mark J. Gullis 10/17/05
City Auditor

**REVIEWED AND APPROVED:
SPRINGFIELD FINANCE CONTROL BOARD
BY ITS DESIGNEES:**

Charles V. Ryan
CHARLES V. RYAN, MAYOR

Alan Lebovidge
ALAN LEOVIDGE, CHAIRMAN

CITY OF SPRINGFIELD

Joseph D. Smith
Superintendent of Schools

John Papp
John Papp
SCHOOL COMMITTEE

Eddie Corbin
Chief Procurement Officer

Mary Zambazakis
Mary Zambazakis
Chief Financial Officer

Date Signed: 10/26/05

Date Signed: 10/27/05

**SPRINGFIELD PUBLIC SCHOOLS
TECHNOLOGY SERVICES AGREEMENT**

THIS AGREEMENT made by and between the CITY OF SPRINGFIELD, a municipal corporation within the County of Hampden and the Commonwealth of Massachusetts, with its principal offices at 36 Court Street, Springfield, Massachusetts 01103, acting by and through its School Committee and Chief Procurement Officer with the approval of its Mayor, (hereinafter called the "City"), and **Achieve Telecom Network of MA, LLC.**, a Nevada LLC located at: **40 Shawmut Road, Suite 200, Canton, MA 02021**, (hereinafter referred to as the "Vendor").

RECITALS

WHEREAS, the City through its School Committee and Chief Procurement Officer is seeking a vendor to provide technology services as more specifically defined in Exhibit "A", attached hereto and incorporated herein by reference, (hereinafter "Technology Services") to: **Springfield Public Schools** and

WHEREAS, the Vendor has the necessary qualifications, expertise, experience and ability to provide the Technology Services on behalf of the City; and

NOW THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES:

A. The Vendor shall, in a professional and proper manner, provide Technology Services in accordance with the terms and conditions of this Agreement and pursuant to Commonwealth of Massachusetts State Contract(s) identified as: **MA(OSD) ITS07** (hereinafter referred to as "the State Contract").

1. In accordance with the terms and conditions of this Agreement and the State Contract, the Vendor represents that it is qualified to perform the Technology Services and has obtained all requisite licenses and permits to perform the Technology Services.
2. The Vendor shall attend all necessary conferences and meetings with the City during all stages of the Technology Services.
3. The Vendor and City recognize that the technology industry is constantly evolving and that modifications to the Technology Services may be required and therefore, agree that the Vendor shall consult with the City through its designee Robert G. Hamel, Assistant to the Superintendent, and receive his prior written approval before making any allowable modifications to the Technology Services defined in Exhibit "A" and shall conform its Technology Services to such approved modifications.

2. TIME:

The Vendor hereby agrees with the City to furnish & deliver Technology Services for a period of one (1) year commencing on July 01, 2006 and shall be completed by June 30, 2007 unless amended by the parties hereto.

4. **TERMINATION:**

The City may terminate this Agreement for any reason prior to the date of expiration with 15 days written notice. In the event of termination of this Agreement, the sole remedy available to Vendor is the amount of fees for Technology Services rendered but not yet paid.

5. **REMEDIES OF THE CITY:**

If Vendor shall provide services to the City in a manner which are not to the satisfaction of the City, City may suspend or terminate payment to Vendor in whole or in part, until the Technology Services described in Exhibit "A" are completed to the satisfaction of the City and in addition may:

- A. require the Vendor to provide Technology Services which are satisfactory to the City at no additional cost to the City, or
- B. obtain services at the cost of the Vendor in substitution for those due from the Vendor, or
- C. terminate this Agreement.

6. **LIABILITY AND INSURANCE:**

- A. The Vendor shall at its own expense shall provide, maintain and require its subcontractors to provide and maintain all insurance for its employees, including disability, worker compensation and unemployment compensation, in accordance with the statutory requirement of any state where the work is performed. The Vendor is an independent contractor and is not an employee or agent of the City.
- B. The Vendor shall indemnify and hold harmless the City against any and all liability, lost damages, costs or expense for personal injury or damage to real or tangible personal property which the City may sustain, incur or be required to pay, arising out of or in connection with the Technology Services performed under this Agreement by reason: of any negligent action/inaction or willful misconduct of the Vendor, its agents or persons employed by the Vendor, or any of its subcontractors.

7. **SUCCESSORS AND ASSIGNS:**

- A. The City and the Vendor each binds itself, and legal representatives to such other party with respect to all covenants of this Agreement.
- B. Neither the City nor the Vendor shall assign any interest in this Agreement or transfer any interest in the same without prior written approval of the other party thereto.

12. **EFFECTIVE DATE:**

This Agreement becomes effective upon execution by the Mayor of the City of Springfield and, if subject to USAC reimbursement, (a) the approval of the maximum allowable funding by the S.L.D. as referenced in 3 above or (b) an authorizing vote of the Springfield School Committee to proceed at less than maximum allowable funding by the S.L.D.

13. **EXTENT OF AGREEMENT:**

This Agreement represents the entire and integrated Agreement between the City and the Vendor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Vendor.

IN WITNESS WHEREOF, the **CITY OF SPRINGFIELD**, acting by and through its School Committee and Chief Procurement Officer, with the approval of its Mayor, have executed this Agreement as a seal instrument on the day and year dated below.

VENDOR: Achieve Telecom Network of MA, LLC.

By: Victor E. Gatto

CITY OF SPRINGFIELD

[Signature]
Superintendent of Schools

Approved as to Form:

[Signature]
Associate City Solicitor

Approved as to appropriation:

~~MP \$1,701,000.00~~ NO APPROPRIATION
IS AVAILABLE TO
FUND THIS
AGREEMENT.
FUND: ~~N/A~~

[Signature] 1/4/07
City Auditor

[Signature]
Chief Procurement Officer

REVIEWED AND APPROVED:
SPRINGFIELD FINANCE CONTROL BOARD
BY ITS DESIGNEES:

[Signature]
Chief Financial Officer

Charles V. Ryan
CHARLES V. RYAN, MAYOR

Date Signed: 1/17/07

Alan Lebovidge Date Signed: _____
ALAN LEBOVIDGE, CHAIRMAN

**SPRINGFIELD PUBLIC SCHOOLS
TECHNOLOGY SERVICES AGREEMENT**

THIS AGREEMENT made by and between the CITY OF SPRINGFIELD, a municipal corporation within the County of Hampden and the Commonwealth of Massachusetts, with its principal offices at 36 Court Street, Springfield, Massachusetts 01103, acting by and through its School Committee and Chief Procurement Officer with the approval of its Mayor, (hereinafter called the "City"), and **Achieve Telecom Network of MA, LLC**, a Nevada LLC located at: **40 Shawmut Road, Suite 200, Canton, MA 02021**, (hereinafter referred to as the "Vendor").

RECITALS

WHEREAS, the City through its School Committee and Chief Procurement Officer is seeking a vendor to provide technology services as more specifically defined in Exhibit "A", attached hereto and incorporated herein by reference, (hereinafter "Technology Services") to: **Springfield Public Schools** and

WHEREAS, the Vendor has the necessary qualifications, expertise, experience and ability to provide the Technology Services on behalf of the City; and

NOW THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES:

- A.** The Vendor shall, in a professional and proper manner, provide Technology Services in accordance with the terms and conditions of this Agreement and pursuant to Commonwealth of Massachusetts State Contract(s) identified as: **MA(OSD) ITS07** (hereinafter referred to as "the State Contract").
1. In accordance with the terms and conditions of this Agreement and the State Contract, the Vendor represents that it is qualified to perform the Technology Services and has obtained all requisite licenses and permits to perform the Technology Services.
 2. The Vendor shall attend all necessary conferences and meetings with the City during all stages of the Technology Services.
 3. The Vendor and City recognize that the technology industry is constantly evolving and that modifications to the Technology Services may be required and therefore, agree that the Vendor shall consult with the City through its designee Robert G. Hamel, Assistant to the Superintendent, and receive his prior written approval before making any allowable modifications to the Technology Services defined in Exhibit "A" and shall conform its Technology Services to such approved modifications.

2. TIME:

The Vendor hereby agrees with the City to furnish & deliver Technology Services for a period of one (1) year commencing on July 01, 2006 and shall be completed by June 30, 2007 unless amended by the parties hereto.

3. **COMPENSATION, PAYMENT AND BILLING PROCEDURE:**

- A. It is expressly agreed and understood that in no event shall the City have any financial liability under this Agreement and that the funding for this contract shall be in the amount of:

One Million Seven-Hundred One Thousand Dollars and 00/00 (\$ 1,701,000.00)

and shall be provided for as specified in Sections B,C,D,& E detailed below.

- B. If the City is eligible for a Universal Service Fund Discount for the Technology Services from the Schools and Library Division (hereinafter "S.L.D.") of the Universal Service Administrative Company (hereinafter "USAC") which is a non-profit corporation which administers the Universal Service Fund for the Federal Communication Commission ("FCC"), payment for the Technology Services will be made either by the Service Provider Invoice method ("SPI") or a Billed Entity Applicant Reimbursement ("BEAR") method as specified by USAC under the FCC "ERATE" program. Under the "SPI" method of reimbursement, the City will pay only its discounted share to the Vendor; the balance of the invoice is paid or credited to the Vendor by USAC. In some situations the SPI method of payment is impractical. In such cases, the City may choose the BEAR method of payment. Under the BEAR method, the City will pay Vendor's invoice in advance of the City receiving the USAC reimbursement. Under the BEAR method, when and if a USAC funding commitment letter is later obtained, the City will request a reimbursement from USAC. **Upon receipt of the BEAR, the Vendor must promptly remit that sum to the City. If the BEAR method is used, once the Vendor obtains the reimbursement from USAC, the Vendor acts merely as a pass-through and must reimburse the City its money. The parties agree that any BEAR Reimbursement is the absolute property of the City and that the Vendor has no legal or equitable right to the BEAR Reimbursement.**
- C. Pursuant to Vendor's quote attached hereto as Exhibit "A" and pursuant to applicable Commonwealth of Massachusetts Blanket pricing, USDLA (United States Distance Learning Association) agrees to compensate Vendor for Technology Services less any monies awarded through direct payment by S.L.D. to the Vendor as referenced in this Agreement and consistent with applicable federal statutes, regulations, and USAC's rules and manual.
- D. Payments will be made pursuant to paragraph 3.C of this Agreement only upon the submission of an invoice to the City that clearly states the services provided, including the date and nature of the services rendered. Invoices must be submitted in triplicate and mailed to:
- United States Distance Learning Association
Attn: USDLA Digital Divide Fund
8 Winter Street, Suite 508
Boston, MA 02108-4705**
- E. The City shall not be liable for any services, expenses, or costs in connection with the Technology Services in excess of the amount currently appropriated therefore under this Agreement or any amendments hereto.

4. **TERMINATION:**

The City may terminate this Agreement for any reason prior to the date of expiration with 15 days written notice. In the event of termination of this Agreement, the sole remedy available to Vendor is the amount of fees for Technology Services rendered but not yet paid.

5. **REMEDIES OF THE CITY:**

If Vendor shall provide services to the City in a manner which are not to the satisfaction of the City, City may suspend or terminate payment to Vendor in whole or in part, until the Technology Services described in Exhibit "A" are completed to the satisfaction of the City and in addition may:

- A. require the Vendor to provide Technology Services which are satisfactory to the City at no additional cost to the City, or
- B. obtain services at the cost of the Vendor in substitution for those due from the Vendor, or
- C. terminate this Agreement.

6. **LIABILITY AND INSURANCE:**

- A. The Vendor shall at its own expense shall provide, maintain and require its subcontractors to provide and maintain all insurance for its employees, including disability, worker compensation and unemployment compensation, in accordance with the statutory requirement of any state where the work is performed. The Vendor is an independent contractor and is not an employee or agent of the City.
- B. The Vendor shall indemnify and hold harmless the City against any and all liability, lost damages, costs or expense for personal injury or damage to real or tangible personal property which the City may sustain, incur or be required to pay, arising out of or in connection with the Technology Services performed under this Agreement by reason: of any negligent action/inaction or willful misconduct of the Vendor, its agents or persons employed by the Vendor, or any of its subcontractors.

7. **SUCCESSORS AND ASSIGNS:**

- A. The City and the Vendor each binds itself, and legal representatives to such other party with respect to all covenants of this Agreement.
- B. Neither the City nor the Vendor shall assign any interest in this Agreement or transfer any interest in the same without prior written approval of the other party thereto.

8. EQUAL EMPLOYMENT OPPORTUNITY:

During the performance of this Agreement, the Vendor agrees as follows:

- A. The Vendor will not discriminate against any client or applicant for services because of race, color, religion, sex, sexual orientation, disability, family status or national origin. The Vendor will take affirmative action to ensure that clients, applicants and employees are treated without regard to their race, color, religion, sex, sexual orientation, disability, family status or national origin.
- B. In the event of the Vendor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further City contracts.

9. CONFLICT OF INTEREST:

- A. The Vendor further covenants that in the performance of this Agreement that it does not have any interest, direct or indirect, which will conflict in any manner or degree with the performance of the services hereunder, as set forth in chapter 268A of the Massachusetts General Laws.
- B. No officer or employee of the City shall participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested. No officer or employee of the City shall have any interest, direct or indirect, in the Agreement or the proceeds thereof.

10. APPLICABLE LAW AND EXCLUSIVE FORUM:

- A. This agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.
- B. The parties hereto expressly agree that the sole and exclusive place, status and forum of this agreement shall be the City of Springfield, Hampden County, Massachusetts. All actions and legal proceedings which in any way relate to this agreement shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City of Springfield, Hampden County, Massachusetts. It is the express intention of the parties to this agreement that the exclusive venue of all legal actions and procedures of any nature whatsoever which relate in any way to this agreement shall be either the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts sitting in the Hampden County Hall of Justice, Springfield, Massachusetts or the United States District Court sitting in Springfield, Massachusetts.

11. COMPLIANCE WITH LAWS:

The Vendor shall comply with all applicable rules and regulations promulgated by all local, state and national boards, bureaus and agencies.

12. **EFFECTIVE DATE:**

This Agreement becomes effective upon execution by the Mayor of the City of Springfield and, if subject to USAC reimbursement, (a) the approval of the maximum allowable funding by the S.L.D. as referenced in 3 above or (b) an authorizing vote of the Springfield School Committee to proceed at less than maximum allowable funding by the S.L.D.

13. **EXTENT OF AGREEMENT:**

This Agreement represents the entire and integrated Agreement between the City and the Vendor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Vendor.

IN WITNESS WHEREOF, the **CITY OF SPRINGFIELD**, acting by and through its School Committee and Chief Procurement Officer, with the approval of its Mayor, have executed this Agreement as a seal instrument on the day and year dated below.

VENDOR: **Achieve Telecom Network of MA, LLC.**

By: Victor E. Gatto

CITY OF SPRINGFIELD

Joseph M. Burke
Superintendent of Schools

Approved as to Form:

[Signature]
Associate City Solicitor

☒ Approved as to appropriation:

~~MP \$1,701,000.00~~ NO APPROPRIATION
IS AVAILABLE TO
FUND THIS
FUND: ~~N/A~~ AGREEMENT

Mark J. Amello 11/4/07
City Auditor

[Signature]
Chief Procurement Officer

REVIEWED AND APPROVED:
SPRINGFIELD FINANCE CONTROL BOARD
BY ITS DESIGNEES:

Mary Zamboni
Chief Financial Officer

Charles V. Ryan
CHARLES V. RYAN, MAYOR

Date Signed: 11/17/07

ALAN LEOVIDGE, CHAIRMAN

Date Signed: _____

**SPRINGFIELD PUBLIC SCHOOLS
TECHNOLOGY SERVICES AGREEMENT**

THIS AGREEMENT made by and between the CITY OF SPRINGFIELD, a municipal corporation within the County of Hampden and the Commonwealth of Massachusetts, with its principal offices at 36 Court Street, Springfield, Massachusetts 01103, acting by and through its School Department and Chief Procurement Officer with the approval of its Mayor, (hereinafter called the "City"), and **Achieve Telecom Network of MA, LLC**, a Nevada LLC located at: **40 Shawmut Road, Suite 200, Canton, MA 02021**, (hereinafter referred to as the "Vendor").

RECITALS

WHEREAS, the City through its School Department and Chief Procurement Officer are in need of a vendor to provide technology services to the **Springfield Public Schools ("SPS")** as more specifically defined in Exhibit "A", attached hereto and incorporated herein by reference, (hereinafter "Technology Services"); and

WHEREAS, the Vendor has the necessary qualifications, expertise, experience and ability to provide the Technology Services on behalf of the City; and

NOW THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES:

A. The Vendor shall, in a professional and proper manner, provide Technology Services to the SPS in accordance with the terms and conditions of this Agreement and pursuant to Commonwealth of Massachusetts State Contract(s) identified as: **MA(OSD) ITS07** (hereinafter referred to as "the State Contract").

1. In accordance with the terms and conditions of this Agreement and the State Contract, the Vendor represents that it is qualified to perform the Technology Services and has obtained all requisite licenses and permits to perform the Technology Services.
2. The Vendor shall attend all necessary conferences and meetings with the City during all stages of the Technology Services.
3. The Vendor and City recognize that the technology industry is constantly evolving and that modifications to the Technology Services may be required and therefore, agree that the Vendor shall consult with the City through its designee Robert G. Hamel, Assistant to the Superintendent, and receive his prior written approval before making any allowable modifications to the Technology Services defined in Exhibit "A" and shall conform its Technology Services to such approved modifications.

2. TIME:

The Vendor hereby agrees with the City to furnish & deliver Technology Services for a period of one (1) year commencing on July 1, 2007 and shall be completed by June 30, 2008 unless amended by the parties hereto.

3. **COMPENSATION, PAYMENT AND BILLING PROCEDURE:**

- A. It is expressly agreed and understood that in no event shall the City have any financial liability under this Agreement. Funding for this contract shall be in the amount of:

One Million Eight-Hundred Forty-Five Thousand and 00/100 Dollars (\$ 1,845,000.00)

and shall be provided for as specified in Sections B,C, D, and E as detailed below.

- B. If the City is eligible for a Universal Service Fund Discount for the Technology Services from the Schools and Library Division (hereinafter "S.L.D.") of the Universal Service Administrative Company (hereinafter "USAC") which is a non-profit corporation which administers the Universal Service Fund for the Federal Communication Commission ("FCC"), payment for the Technology Services will be made either by the Service Provider Invoice method ("SPI") or a Billed Entity Applicant Reimbursement ("BEAR") method as specified by USAC under the FCC "ERATE" program. Under the "SPI" method of reimbursement, the City will pay only its discounted share to the Vendor; the balance of the invoice is paid or credited to the Vendor by USAC. In some situations the SPI method of payment is impractical. In such cases, the City may choose the BEAR method of payment. Under the BEAR method, the City will pay Vendor's invoice in advance of the City receiving the USAC reimbursement. Under the BEAR method, when and if a USAC funding commitment letter is later obtained, the City will request a reimbursement from USAC. **Upon receipt of the BEAR, the Vendor must promptly remit that sum to the City. If the BEAR method is used, once the Vendor obtains the reimbursement from USAC, the Vendor acts merely as a pass-through and must reimburse the City its money. The parties agree that any BEAR Reimbursement is the absolute property of the City and that the Vendor has no legal or equitable right to the BEAR Reimbursement.**
- C. Pursuant to Vendor's quote attached hereto as Exhibit "A" and pursuant to applicable Commonwealth of Massachusetts Blanket pricing, USDLA (United States Distance Learning Association) agrees to compensate Vendor for Technology Services less any monies awarded through direct payment by S.L.D. to the Vendor as referenced in this Agreement and consistent with applicable federal statutes, regulations, and USAC's rules and manual.
- D. Payments will be made pursuant to paragraph 3.C of this Agreement only upon the submission of an invoice to the City that clearly states the services provided, including the date and nature of the services rendered. Invoices must be submitted in triplicate and mailed to:
- United States Distance Learning Association
Attn: USDLA Digital Divide Fund
8 Winter Street, Suite 508
Boston, MA 02108-4705**
- E. The City shall not be liable for any services, expenses, or costs in connection with the Technology Services in excess of the amount currently appropriated therefore under this Agreement or any amendments hereto.
- F. **Retroactive E-rate Award:** The Vendor agrees to provide the services to the City as described herein during the term of this Agreement, July 1, 2007 through June 30, 2008, pending receipt of a Funding Commitment Decision Letter ("FCDL") from E-rate for Funding Year 2007, as the Vendor did for Funding Year 2006. The Vendor anticipates a

retroactive award from E-rate for Funding Year 2007 as was received for Funding Year 2006. However, in conformity with this Section 3, the Vendor will accept full financial liability for the project and its service continuance through Funding Year 2007. The Vendor acknowledges and accepts that the services will continue at the Vendor's risk and not that of the Springfield Public Schools, in the event that retroactive E-rate award is not received for Funding Year 2007.

The Vendor agrees not to invoice E-rate for any services during Funding Year 2007 until: (1) the FCDL has been received by SPS and the Vendor; (2) this Agreement has been signed by all necessary parties; and (3) Form 486 has been filed with E-rate. The USDLA has already granted approval to SPS through 2009 in support of the AchieveXpress project. Although SPS has already been granted approval for 2007 E-rate, the Vendor will not invoice the grant for the "co-pay" amount until all of the above-mentioned details are completed with E-rate and this Agreement is fully signed.

4. TERMINATION:

The City may terminate this Agreement for any reason prior to the date of expiration with 15 days written notice. In the event of termination of this Agreement, the sole remedy available to Vendor is the amount of fees for Technology Services rendered but not yet paid.

5. REMEDIES OF THE CITY:

If Vendor shall provide services to the City in a manner which are not to the satisfaction of the City, City may suspend or terminate payment to Vendor in whole or in part, until the Technology Services described in Exhibit "A" are completed to the satisfaction of the City and in addition may:

- A. require the Vendor to provide Technology Services which are satisfactory to the City at no additional cost to the City, or
- B. obtain services at the cost of the Vendor in substitution for those due from the Vendor, or
- C. terminate this Agreement.

6. LIABILITY AND INSURANCE:

- A. The Vendor shall at its own expense shall provide, maintain and require its subcontractors to provide and maintain all insurance for its employees, including disability, worker compensation and unemployment compensation, in accordance with the statutory requirement of any state where the work is performed. The Vendor is an independent contractor and is not an employee or agent of the City.
- B. The Vendor shall indemnify and hold harmless the City against any and all liability, lost damages, costs or expense for personal injury or damage to real or tangible personal property which the City may sustain, incur or be required to pay, arising out of or in connection with the Technology Services performed under this Agreement by reason of any negligent action/inaction or willful misconduct of the Vendor, its agents or persons employed by the Vendor, or any of its subcontractors.

7. **SUCCESSORS AND ASSIGNS:**

- A. The City and the Vendor each binds itself, and legal representatives to such other party with respect to all covenants of this Agreement.
- B. Neither the City nor the Vendor shall assign any interest in this Agreement or transfer any interest in the same without prior written approval of the other party thereto.

8. **EQUAL EMPLOYMENT OPPORTUNITY:**

During the performance of this Agreement, the Vendor agrees as follows:

- A. The Vendor will not discriminate against any client or applicant for services because of race, color, religion, sex, sexual orientation, disability, family status or national origin. The Vendor will take affirmative action to ensure that clients, applicants and employees are treated without regard to their race, color, religion, sex, sexual orientation, disability, family status or national origin.
- B. In the event of the Vendor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further City contracts.

9. **CONFLICT OF INTEREST:**

- A. The Vendor further covenants that in the performance of this Agreement that it does not have any interest, direct or indirect, which will conflict in any manner or degree with the performance of the services hereunder, as set forth in chapter 268A of the Massachusetts General Laws.
- B. No officer or employee of the City shall participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested. No officer or employee of the City shall have any interest, direct or indirect, in the Agreement or the proceeds thereof.

10. **APPLICABLE LAW AND EXCLUSIVE FORUM:**

- A. This agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.
- B. The parties hereto expressly agree that the sole and exclusive place, status and forum of this agreement shall be the City of Springfield, Hampden County, Massachusetts. All actions and legal proceedings which in any way relate to this agreement shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City of Springfield, Hampden County, Massachusetts. It is the express intention of the parties to this agreement that the exclusive venue of all legal actions and procedures of any nature whatsoever which relate in any way to this agreement shall be either the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts sitting in the

Hampden County Hall of Justice, Springfield, Massachusetts or the United States District Court sitting in Springfield, Massachusetts.

11. **COMPLIANCE WITH LAWS:**

The Vendor shall comply with all applicable rules and regulations promulgated by all local, state and national boards, bureaus and agencies.

12. **EFFECTIVE DATE:**

This Agreement shall become effective upon execution by all necessary parties listed on the signature page, including the Mayor of the City of Springfield.

13. **EXTENT OF AGREEMENT:**

This Agreement represents the entire and integrated Agreement between the City and the Vendor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Vendor.

IN WITNESS WHEREOF, the CITY OF SPRINGFIELD, acting by and through its School Department and Chief Procurement Officer, with the approval of its Mayor, have executed this Agreement as a seal instrument on the day and year dated below.

VENDOR:

Achieve Telecom Network of MA, LLC.

By: Victor E. Gatto

CITY OF SPRINGFIELD

[Signature]
Superintendent of Schools

Approved as to Form: [Signature]

[Signature]
City Solicitor

Assistant

[Signature]
Chief Procurement Officer

[Signature] Approved as to appropriation: NA

[Signature]
Deputy City Auditor

APPROVED:

[Signature]
CHARLES V. RYAN, MAYOR and
CONTROL BOARD DESIGNEE

Reviewed:

[Signature]
Chief Financial Officer

Date Signed: _____


EXHIBIT 21

Declaration

I, Victor E. Gatto, do make oath and state:

1. I, Victor E. Gatto, as Chairman of Achieve Telecom Network of Massachusetts ("Achieve"), discussed contracts for Achieve's digital transmission service with key representatives of the City of Springfield, Massachusetts. These discussions occurred in the month prior to the signing of these contracts. The signings were on October 25, 2005, January 17, 2007 and August 3, 2007. In most cases these discussions were with Robert G. Hamel, the Assistant to the Superintendent for the Springfield Public School District of Springfield, Massachusetts. Mr. Hamel was directly involved with the City's E-rate Program filings. On occasion during these discussions, Mr. Hamel and I were joined by the City Solicitor, whose name I do not recall.
2. The Springfield /Achieve contracts as detailed by the signing dates above were drafted by the City Solicitor in consultation with Mr. Hamel. I understood, based on statements made to me at the time by Mr. Hamel and the City Solicitor, that the language of the proposed and final contracts was required in order for the City to conform with requirements of a Commonwealth of Massachusetts Finance Control Board which had earlier been appointed by the Governor to oversee all transactions of the City and the School District.
3. The particular language in the contracts that has been cited by the Administrator in his April 26 AdDecs, namely, "It is expressly agreed and understood that in no event shall the City have any financial liability under this Agreement..." (Contracts, § 3.A), was drafted by the City's representatives. As Achieve's representative in these contractual discussions, I asked for and received an explanation for the inclusion of this language, and was told of the Finance Control Board issue as described above.
4. No other Achieve contract with any other school district or any other customer contained this "no financial liability" language. My agreement on behalf of Achieve to the Springfield contracts in this unusual form was an accommodation to the regulatory oversight requirements of the City in light of its difficult financial situation.

Signed under the penalty of perjury this 24th day of June 2010.



Victor E. Gatto